الجمهورية الجزائرية الد يمقراطية الشعبية
وزارة التعليم العالي والبحث العلمي

جامعة الجزائر
كلية أصول الدين- قسم أصول الفقه

مذكرة ماجستير في العلوم الإسلامية

أحكام التيسير في الشريعة الإسلامية وأثره كعامل من

التخصص: أصول الفقه

إعداد الطالب:
حاوة طاهر

αοδ ζξχ θωε αοδ ζξχ θωε αοδ

الجزائـر 1426- 2005م

ζξχ θωε

الجمهورية الجزائرية الديمقراطية الشعبية
وزارة التعليم العالي والبحث العلمي

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مذكرة ماجستير في العلوم الإسلامية:

أَحْكَامُ التَّيْسِيرِ فِي الشَّرِيعَةِ الإِسْلامِيَّةِ وأَثَرُهُ كَعَامِلٍ مِنْ عَوَامِلِ تَطْبِيقِهَا

التخصص:أصول الفقه

تحت إشراف الدكتور:

بيرم عبد المجيد

إعداد الطالب:

حاوة طاهر

أعضاء لجنة المناقشة:

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2- /å

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3 /å

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الجزائر 1426 - 2005م

شكر و تقدير

بعد حمد الله تعالى على إحسانه، وشكره على توفيقه وامتنانه، أقول:

وفاء للبر وعرفانا بالجميل، وتأسيا بقول نبينا محمد ﷺ:«لا يشكر اللهَ من لا يشكرُ الناسَ» أسجل هاهنا شكري وتقديري لكل من أعانني وأفادني من قريب أو بعيد في إنجاز هذا العمل، فأتوجه بالشكر إلى جامعة الجزائر ممثلة في كليتنا المحترمة، التي سهلت لي سبيل الدراسة الشرعية،فلكلِّ أساتذتي الذين نهلت من علومهم أرفع أحاسيس الشكر والتقدير، وأخص بالذكر أستاذي الفاضل الدكتور عبد

[illegible]

[illegible]

[1] [illegible] 5109

[2] [illegible] 1876 [illegible]

[illegible] 174/6 [illegible] 1973

[3] [illegible] 193 [illegible] 192 [illegible]

1425 [illegible]

أسباب اختيار الموضوع :

[illegible]

أهمية الموضوع

[illegible]

الجديد في البحث:

[illegible]

[illegible]

المنهج المتبع في البحث:

.72/1

All Muslim scholars are agree that our religion is based on easiness and forgiveness; and this has many reasons:

- The first one is that the religion is set to be applied by people.
- The second one is that the religion is directed to all mankind whatever is the skin or the region.

It's known that people who have weak faith choose the easiest way in their every day's life, and this can increase especially with excuses and apologies. in this way, our Lord set the Islamic rules, in contrast with the previous religions, that were set according to some characterizations as time and place.

The scholar Tahar Ben Ashur said:

«The purpose from the easiness qnd the forgiveness of Islam is that our Lord created these features in mankind, so people escape from rigorism .Since Islam is easy and free from rigorism,

our Lord want it to be eternal. All this made Islam the expansion of Islam in this the earth»

We understand from this, that this religion which is directed to all mankind has some specific characterizations that solve people's troubles in the world.

The easiness and tolerance of this religion help people to apply the Islamic laws in the best way which is wanted by the Lord and his messenger, because the Lord doesn't oblige mankind to do what they don't support.

From this point of view, I chose this subject for my schoolmaster memoir, knowing that it's harder than I suspected. This search imposes on two main aspects:

- Showing the easiness of Islam, with examples
- showing the effect of this easiness in applying the laws depending on time and place.

I noticed that this subject represents one fifth of Islam, since it mentioned one of the Five basic rules.

El imam Eshafiee said:

"When a problem increase it's in his way to be solved"

People followed Islam because of its beautiful image of easiness and forgiveness.

Eshatibi said in his book "el-muafakat":

"All the Islamic rules revealed step by step, and they have not revealed in one time, to not let people dislike them ". So, this easiness in all sectors of Islam is based on the simplification of the sources. And this image is well shown and illustrated **in Quran** and **Sunnah**.

As concerns Sunnah, it is the explanation of quran and the simplification of his concepts to be understood, and rather, well applied.

The prophet Mohamed (peace be upon him), when he had to choose between to matters, he always chose the simplified and the easiest one .

This great religion of Islam, which is addressed to all mankind with all their varieties, contains some specific characterizations, which makes it simplified and easy for everybody. So, we can consider that all the Islamic rules are based on this easiness we are talking about, which makes people satisfied when they apply these rules.

This search bases on:

-the religion is for the benefit of people.

-the care of the Islamic scholars on easiness.

-the meaning of easiness in Islam

-the division of easiness to principal and rare.

- The excuses that led to easiness.

-the kinds of simplifications caused by hardness.

Rules concerning the meaning of easiness.

-The effect of the Islamic easiness in application, and the spread through time and space

- Comparison between Islam and the previous religions.

- The characteristics of Islam.

-Dealing with hardness and its inappropriateness with time.

Our prophet Mohamed (peace be upon him) is described in Torah and the Bible as a representative of mercy and forgiveness , and this image is well illustrated in our holy book "Quran".

Imam ESOYUTY said in his book (AL ASHBAH WA NAZAYER)

«....And I collected them in seven books; the first one is the explanation of the five basic rules that are the main issue of all Fikh problems. The rules , mean:

1. Everything is linked zith its intention.

2. Doubt don't affect certitude.
3. Suffering led to easiness.
4. Damage is removed
5. Habit is applied»

NB:I divided the search on two main parts:

- The firs part:The main aspects of the easiness of Islam.
- The second part: The effect of this easiness in applying the laws depending on the setting.[1]

خطـة الـرسـالـة

الفصل الأول: القضايا الكلية لمفهوم التيسير في الشريعة الخاتمة

المبحث الأول:

مفهوم التيسير: تعريفه، أدلته وموارده في الكتاب والسّنة وأقوال العلماء

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[1] [1]He is a tunisian schlar,born in 1876;Imam of Zaytuna, and the head of the Maliky Mufty in Tunisia,he was a teacher of some great schollars,one of his books is (ethreer wa tanweer) and Maqaseed Ash-areea)he died in1973.(see: Al-aalam.by ZEREKLY:6/7

[1] see : Maqaseed Ash-areea Al Islamia.p 192-193 by TAHAR BEN ASHUR. realization by Mohamde Habeeb Ben El Khudja. The print of the Qatarian Islamic Minister 1425

[1] AL ASHBAH WA NAZAYER by Imam ESSOYUTY page **3**. Dar el kutub el ilmia.

المبحث الثاني:

نماذج تطبيقية للتيسير في الأدلة الشرعية وعمل الأئمة والقضاة:

المبحث الثالث:

قاعدة المشقّة تجلب التيسير ومكانتها في الفقه الإسلامي وآثارها العملية:

المبحث الرابع: قواعد وضوابط في مفهوم التيسير:

المبحث الثاني:الأثر التطبيقي في المعاملات المالية والأنكحة والأحكام

المبحث الثالث: بين الشريعة الحنيفية والشرائع السابقة:

المبحث الثالث:مناقشة دعاوى المعارضين:

الفصل الأول:

القضايا الكلية لمفهوم التيسير في الشريعة الخاتمة

المبحث الأول:

مفهوم التيسير: تعريفه، أدلته وموارده في الكتاب والسّنة وأقوال العلماء.

[illegible]

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[1] [illegible] 44

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[3] [illegible] (6/2)

رحمه الله

(270/5)

121

259/4

1415

327/9

2944

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[3] [illegible] 840 [illegible] 1080 [illegible] 127/4 [illegible]

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[illegible]

69/2

90/2

1599

292/2

[185

60-59/20 [1]

8/2 [2]

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[6] [illegible] 4403 [illegible]

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[3] 572/4

[5] 07/1

[6] 78

[59-56

رحمه الله:[1]

.[2]

[3] ... [4]

[1] ... 291/2 ... 5/1 ... 790 ... 1416.

[2] 128 / 2

[3] ... 192/4 ... 41/1 ... 79/3 ... 9

[4] رحمه الله ... 394 ... 1417. 7

(14-13/1)

(443/1)

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[8] [illegible] 1100

[9] [illegible] 1970

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[6] [illegible] 4403

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[8] [illegible] 6858

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[11] [illegible] 2670

[12] [illegible] 204/4

[13] [illegible] 4250

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2043

564 08/2

2387

2355

2593

3898

101/12

[1] 136/1 - 37؛ 25/1 - 26

[2] 52/1 - 53

[3] 58، 2000، 1

[4] 223/14 - 224

[1]

[2]

134/4

رحمه الله:

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[1] 537/21

[1] 398/3

[2] 2019 718

[3] 676

135/3

5499

260/10 263/10

94/2 59/4

161/2

179

19/2

3/2

537

[1] 19/2

[2] 831

1155

[3] رحمه الله

433/2 79/7

[4] 12/2 702

[1] 1998 189/1

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[2] [illegible] 23/8

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[3] [illegible] 208/2

[4] [illegible] 32 [illegible] 368/2 [illegible] 162/7 [illegible]

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[illegible] 44

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[4] [illegible] 1/80

[5] [illegible] 1/77

[6] [illegible] 2/299 [illegible] 3/22

1 216

2 36

[1] 120/1

[2] 83

[4] 273 ... 1414

[5] 83

[1] 99/3 ... 2812

[2] 1974

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ما كان محظورا	يبيح	الوقوع في الضرورة

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[3] [illegible] 77
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[5] [illegible] 254

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[3] 45

[1]

[2] 123/2

[3] 287/4 4950

[4] 200/13

[5] 231

119/1 ... 341/4

رحمه الله

123/2 [1]

31/1 [2]

411/2 [3]

123/2

(326/1) 101

رحمه الله:

[1] 2873

[2]

[3] 433/6

[4] 130/2

[6] 9/7 317/4

336

454/1 ... 334

54/3 ... 184/3

[1] 79/2

[2] 787

[illegible]

1 [illegible]

2 [illegible]

3 [illegible] 2317

4 [illegible] 2318

5 [illegible] 2315

[1]

[2]

[3]

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2 465/1 1412

3 367/1

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الله [illegible]

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384/1 [illegible]

387/1 [illegible]

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[1] 429/5

[2] 226/4

[4] 4376

562/2

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194/4

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88-78/12

85-48/1

86/8

216/5

209/1

145/5

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[illegible]

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[illegible]

[1] [illegible] 347/21

[2] [illegible] 522

[3] [illegible] 439/1 [illegible] رحمه [illegible] 156/1.

[1] 635/21

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[2] [illegible] 1579

[3] [illegible] 1218

[4] [illegible] 522/3

رحمه الله.

139/1

194/1

98

24/2

219/5

28/24 14/24 33/21

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[1] [illegible] 267/3

[2] [illegible] 705

[3] [illegible] 27/4

[4] [illegible] 35/4 [illegible] 1386 [illegible]

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5 [illegible] 448/1 [illegible] 10 [illegible] 1406 [illegible] 262/1
6 [illegible] 78/1

المبحث الرابع:

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[illegible]

[illegible]

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160/1

350/2 305/5 75/2

496 19/5 305/5

1399

114/2

رحمه

الله

331/24

99/2

285/2

22/2

رحمه الله

[1] 160-159/2

[2] 67/1

[3] 288/2

[5] 87/3

[illegible]

رحمه الله

[illegible]

[1] [illegible] .229

[2] [illegible] 419/11 [illegible]

[3] [illegible] 128/2

[4] [illegible] 193/30 [illegible]

1. [illegible]

2. [illegible]

3. [illegible]

[illegible]

[1] [illegible]

[2] [illegible] 1977 [illegible] 46/2 [illegible]

[3] [illegible] 2197 [illegible]

[illegible]

144/13

41/3

49/3

34/3

1424 115

143/4

[illegible]

[1] [illegible] 167 /66/2

[2] [illegible] 1844

[3] [illegible] 456 [illegible] 354 [illegible] رحمه الله [illegible] 244/3 [illegible] 34 [illegible] 03 [illegible] 7 [illegible] 235

رحمه الله

259/4

رحمه الله

258/4
47/2
38

رحمه الله

[illegible] [3] [illegible] [4] [illegible]

[illegible] رحمه الله: [illegible] [5]

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[1] [illegible] 38/3 [illegible] 123/10 [illegible]

[2] [illegible] 408 [illegible]

[3] [illegible] 259/4

[4] [illegible] 145/4

[5] [illegible] 211/4

[illegible] رحمه الله: [illegible] «[illegible]»[1]

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[illegible]«[illegible]»[3]

[illegible]

[illegible]..[4]

[illegible][5] [illegible][6] [illegible]

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[1] [illegible] 2/40 [illegible] 1/454

[2] [illegible] 242 [illegible] 279 [illegible] 289 [illegible] 11/86 [illegible] 368 [illegible] 1371 [illegible] 1

[3] [illegible] 10/211 [illegible] 272.

[4] [illegible] 475

[5] [illegible] 3/220

[6] [illegible] 3/241 [illegible]

رحمه الله [2]

[1] 13/29

[2]

[illegible]

[1] [illegible] 194/4

[2] [illegible] 259/4

[3] [illegible]

رحمه الله

182/1

152/1

104/1

446

الفصل الثاني:

أثر يسر الشريعة الإسلامية في مرونة تطبيقها وتجاوزها حدودَ الزمان والمكان:

المبحث الأول:

الأثر التطبيقي في العبادات والقربات وسائر الطاعات

تمهيد: في شمول التيسير كل أبواب الشريعة الإسلامية:

[illegible]

[1] [illegible] 164/3

[2] [illegible] 215/1 [illegible] 1414

[3] [illegible] 145/1 [illegible] 52/1

[4] [illegible] 150

[illegible]

1996

47/1

2616

425

[illegible]

585/2

587/2

429/3

290

1211

1681[1]

1397 [2]

20

112/3

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1. [illegible] 252/2

2. [illegible] 1426 [illegible]

3. [illegible] 1966 [illegible] 7890 [illegible]

[1] 1306

[2] 79

131/3

المبحث الثاني

[باب السُّهولة والسماحة في الشراء والبيع، ومن طلب حقا فليطلبه في عفاف]

1 1985 6/5

2 138/4

3 59/2

(mancipatio)

[1] 1970

[2] 386-387/1

[1] 17-16/29

[2] 327 ... 58

[illegible] [1]

[illegible] [2]

[3] [illegible] [4] [illegible] [5]

[illegible]

[1] [illegible] 2150

[2] [illegible] 145/29

[3] [illegible] 179 [illegible].

[4] [illegible] 8/2

[5] [illegible] 16/2

1 10/2

3 29/4

1420

الاجتهادات المضيّقة لمجال الشروط

1 352 6714

2 2309 6716

3 127/29

129/29 50/1

416 /2

1414

[illegible] [1]

الاجتهادات الموسعة لمجال الشروط في العقد [illegible]

[illegible] [2]

[illegible] [3]

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[1] [illegible] 27/29 [illegible] 303 [illegible] 1399 [illegible]

[2] [illegible] 552-553/1 [illegible]

[3] [illegible] 132-133/29

[illegible] [1]

تكييف الشروط المباحة في العقود

[illegible]

[illegible] [2]

[illegible]

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[1] [illegible] 390/3

[2] [illegible] 50-149/29 [illegible] 1893 [illegible] 323/5 [illegible]

المضاربة مثال[1]

الحوالة[2].

الحكمة من مشروعية المضاربة هي التيسير على الناس:

باب]

الشركة والمضاربة[

[1] 195/19

[2] 437/3

[3] 2525 ... 2289 ... 161/4

[4] 2/22 ... 125/13 ... 74/4 ... 71/5

[5] 836 ... 2287

[illegible]

المضاربة في ظل المعاملات الحديثة:

[illegible]

نموذج الحوالة:

[1] 138

[2] 285/1

[3] 215/1

[4] 68/1 90/11

وجه التيسير والرفق فيها بالطرفين:

[1]

[illegible]

[1] [illegible] 54/1 [illegible] 1416 [illegible] 65

[2] [illegible] 396/3

[3] [illegible] 2037 [illegible] 1511

[4] [illegible] 298/5 [illegible] 53/3

[5] [illegible] 510/20

[illegible]

[illegible] رحمه الله:

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[1] [illegible] 574

[2] [illegible] 19/2 [illegible] 460/3 [illegible] 482/6 [illegible] 164/3

[3] [illegible] 105

1 159/5

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1493

6402

1695 ، 1696

1 44-43 ... 1415.

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[3] 35/1

[4] 107

[5] 115/2

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67/2 38

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38/1 ، 40/2

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[2] [illegible]

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1 137/2
2 123
3
4 382/1
5 686/2
6 96/1

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1 [illegible] 188-189 [illegible] 1984/9/25

2 [illegible] 145 [illegible] 150

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المطلب الرابع: دعوى جمود الشريعة عن مواكبة العصر:

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1 5850

2 584/10

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خاتمة

إن هذا الدين العظيم

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موضعها	آية	
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294	87	[illegible]
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281	133	[illegible]
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122	143	[illegible]
105	173	[illegible]
226	177	[illegible]
37 133	178	[illegible]
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318	183	[illegible]

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128	18 4	[illegible]
Û6Û7 Û10 120	18 5	[illegible]
87Û5	19 5	[illegible]
68Û6	19 6	[illegible]
Û6 210	19 8	[illegible]
37	20 3	[illegible]
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16	21 9	[illegible]
50	22 0	[illegible]
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259	22 9	[illegible]
259	22 8	[illegible]
Û2 100	23 4	[illegible]
254	23 6	[illegible]
Û7 270	23 7	[illegible]
72	24 0	[illegible]
Û9Û7 245	28 0	[illegible]

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287	81	[illegible]
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Û324 211	97	[illegible]
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333	11	[illegible]
	17	[illegible]
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254	24	[illegible]
136	25	[illegible]
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38Û20	29	[illegible]
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259	34	[illegible]
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289	47	[illegible]
Û338 339	65	[illegible]
67	66	[illegible]
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98	10 2	[illegible]
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	13 5	[illegible]
351	14 7	[illegible]
51 46 297	16 0	[illegible]
297	16 1	[illegible]
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292 356	3	[illegible]
35	4	[illegible]
35	5	[illegible]
36 37 310	6	[illegible]

269	32	[illegible]
131	38	[illegible]
284	41	[illegible]
187	42	[illegible]
281Û	44	[illegible]
328	45	[illegible]
Û281 287	48	[illegible]
287	49	[illegible]
287	50	[illegible]
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291	122	[illegible]
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	100	[illegible]
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362	11	[illegible]
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Û6Û17 39	7	[illegible]
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80	[illegible]	[illegible]
263	[illegible]	[illegible]
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142	[illegible]	[illegible]
319	[illegible]	[illegible]
210	[illegible]	[illegible]
327	[illegible]	[illegible]

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[illegible]

[illegible]

[illegible]

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